

Glenn Randle

November 17, 2005

Chicago, IL

<p style="text-align: right;">Page 74</p> <p>1 that might be amended in the back, we speak of other 2 services in several areas here under other hospital 3 services and supplies, other services and supplies 4 and skilled. It seems as -- yeah, home healthcare 5 speaks of it. I would assume that it would fall in 6 under that, again being Medicare-approved. 7 Q. So I'm sorry, just so that I'm clear, you 8 said other hospital services under hospitalization, 9 other services under skilled nursing facility care? 10 A. Uh-huh. 11 Q. And -- 12 A. And supplies. 13 Q. And supplies. And then supplies and other 14 services under home healthcare? 15 A. Yes, as long as it's Medicare-approved. 16 Q. Anything else? 17 A. Again, on 635, we speak of medical 18 expenses, services and other -- well, services and 19 other services, in-home healthcare speaks of other 20 services. 21 So I would assume that's what it's 22 covering.</p>	<p style="text-align: right;">Page 76</p> <p>1 are not subject to any of the provisions outlined in 2 Article 5 hereof. 3 Would that include the order of benefit 4 determination rules that is in Section 5C which 5 begins on Page 678? 6 MS. CONNOLLY: You can unclip it if you 7 want. 8 BY MR. CHRISTOFFERSON: 9 Q. If that helps, that section actually 10 starts on Page 676 titled Section 5.17, Coordination 11 of Benefits. 12 A. All right. They speak of it as Article 5, 13 and they're saying that's the same as Section 5. It 14 would have been better if they would have put a page 15 number on that part. 16 But again, what you're speaking of is 17 benefits are not subject to any of the provisions 18 outlined in Article 5. So Article 5 speaks of major 19 medical expense, so it would be separate of that I 20 would say, again just the Medicare coverage and 21 everything doesn't relate to major medical to my 22 knowledge.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. If you would, please turn to Page 651. 2 A. 651? 3 Q. Please. 4 A. I see back on 634 here it's speaking under 5 hospice care of outpatient drugs and inpatient 6 respite care. 7 Okay. 651. 8 Q. Yes, 651. In the middle of the page under 9 Part D where it says Enrollment in the Program, and 10 there's a reference there to monthly contributions 11 in the last sentence. 12 A. Uh-huh. 13 Q. Again, is that the contributions you 14 testified to earlier of the subsidized and 15 nonsubsidized employees? 16 A. The same, yes. 17 Q. Could you just briefly turn back to 18 Page 687. 19 A. All right. 20 Q. And the last sentence of that first 21 paragraph says, these benefits are designed -- 22 excuse me, are designated as SMW Plus benefits and</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. I'm sorry, I didn't mean to make this a 2 confusing question, and probably it was. 3 I just wanted to confirm that the 4 coordination of benefits section, which is 5 Section 5.17, and it might help maybe to look at the 6 table of contents at the beginning where it lists 7 the different articles, and that article -- that 8 section comes under Article 5. I just wanted to 9 confirm that, in fact, that provision does not apply 10 to the Supplemental Medicare Wraparound Plus 11 Program. I believe it's Section 5.7.7. 12 A. Yeah, what I'm seeing there -- yeah, 13 everything in there refers to active in Article 5 14 that I've seen so far. 15 Well, 5.11 talks of physical examination, 16 employees and retirees. It looks like we're 17 starting -- Section 5.11 speaks of retirees. 18 Everything before that refers to actives. 19 So I would assume those sections. Again, 20 major medical is talked about in 5.16 and 5.17, 21 coordination of benefits. In 5.18 under 22 subrogation, I would say those are not under the</p>

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<p style="text-align: right;">Page 78</p> <p>1 Medicare retirees would be my interpretation, 2 probably just those ones that says retirees, 5.11, 3 5.12. 4 Does that answer your question? 5 Q. Yes, thank you. 6 A. Okay. 7 Q. You can put that aside now. I'm done with 8 that document for now. 9 A. All right. 10 Q. If you would, please, turn to Exhibit 11 Randle 005, and specifically, if you could turn to 12 Page SMW 0590. And if you could please look again 13 at the second to the last sentence of the second 14 paragraph, it says, SMW Plus will pay the remaining 15 20 percent of reasonable charges in most instances. 16 Do you see that? 17 A. Yes. 18 Q. Did I read that correctly? 19 A. Uh-huh. 20 Q. Again, do you know how Medicare 21 determined, quote, reasonable charges? 22 MS. CONNOLLY: Objection to form.</p>	<p style="text-align: right;">Page 80</p> <p>1 percent of those are paid. It gives them a leeway 2 of a review process if they feel, you know, 3 typically cover yourself language as I would look at 4 it, so in most instances. 5 Again, I think this has been updated later 6 than this '93, and again, this is the pension fund 7 document, so I don't know what their intent was. 8 Q. So you wouldn't know specifically when or 9 why the Fund would not pay that 20 percent? 10 A. Again, I think this statement is made by 11 the pension people that didn't do the health and 12 welfare, so they made it broad enough for the health 13 and welfare people to work within. This was just a 14 general description for the people. 15 Q. Just generally speaking, do you know what 16 the differences are between the Wraparound Plus 17 Program as described in this 1993 summary as opposed 18 to what's described in the 2003 summary? 19 A. Not item-by-item differences, no. 20 Q. Was the deductible the same in 1993 as it 21 is currently under the program? 22 A. My recollection would be that it would be</p>
<p style="text-align: right;">Page 79</p> <p>1 THE WITNESS: Do you want to restate? 2 BY MR. CHRISTOFFERSON: 3 Q. This section says that the Fund as we have 4 discussed will pay 20 percent -- 5 A. Uh-huh. 6 Q. -- of what in the later summary Medicare 7 was allowable charges. 8 A. Right. 9 Q. And here it says -- and you testified 10 earlier that you didn't know how Medicare determined 11 what allowable charges were. 12 In this case, do you know how Medicare 13 determined what reasonable charges were? 14 MS. CONNOLLY: Objection to form. 15 THE WITNESS: I do not know. Of course, 16 this being a '93 document, probably reasonable 17 charges was a part of the jargon at that time, and 18 now it's allowable charges would be my thought. 19 BY MR. CHRISTOFFERSON: 20 Q. Do you know what it meant by in that 21 sentence in most instances? 22 A. That to me would tell me that the high</p>	<p style="text-align: right;">Page 81</p> <p>1 different. I think Medicare has changed that 2 through the years, and as we follow that, it's 3 evolved to whatever the Medicare. 4 Q. And the Fund didn't require a deductible 5 over and above the amount that Medicare required? 6 A. To my knowledge, no. 7 Q. If you could please turn to Page 587. 8 There's a section, How Much Will SMW Plus Cost You. 9 A. Uh-huh. 10 Q. And there are some amounts listed and 11 described in subsequent paragraphs. 12 Were these amounts analogous to the 13 amounts we were discussing earlier just for a 14 different time period, or are these amounts 15 referring to some other type of payment? 16 MS. CONNOLLY: Objection to form. 17 THE WITNESS: Do you want to restate? 18 BY MR. CHRISTOFFERSON: 19 Q. Yes. I'm just wondering whether, take, 20 for example, the first sentence, it says the 21 national pension fund or local unions and council's 22 pension fund under an arrangement with the Sheet</p>

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<p style="text-align: right;">Page 82</p> <p>1 Metal Workers National Health Fund is providing</p> <p>2 SMW Plus at the low cost of \$26 per individual per</p> <p>3 month, and you testified earlier that I believe</p> <p>4 subsidized, what you called subsidized employees</p> <p>5 were paying --</p> <p>6 A. 112.</p> <p>7 Q. -- 112.</p> <p>8 In 1993, was the payment that is now \$112,</p> <p>9 was that \$26?</p> <p>10 A. The last one speaks to you and your</p> <p>11 spouse, and I think the coverage now is spouses</p> <p>12 included, and it's a set amount whether you have a</p> <p>13 spouse or not.</p> <p>14 So I would say that \$52 amount is the one</p> <p>15 that aligns to the 112 moving forward to this time</p> <p>16 period. And again, this is something that was laid</p> <p>17 out by the pension people at that point. The</p> <p>18 validity of it being correct, I can't attest to</p> <p>19 that.</p> <p>20 Q. If you could please turn to Page 593. I</p> <p>21 guess to see the context, you should flip back to</p> <p>22 592 where it says what is not covered.</p>	<p style="text-align: right;">Page 84</p> <p>1 593, under the section How Are Benefits Paid, and</p> <p>2 specifically the second paragraph, that paragraph</p> <p>3 says, when you have expenses for which benefits are</p> <p>4 payable under Medicare, you will receive an</p> <p>5 explanation of benefits, in parenthesis EOB, showing</p> <p>6 what Medicare has paid toward those expenses.</p> <p>7 Simply forward a copy of the EOB form to the</p> <p>8 national health fund office and keep the original</p> <p>9 for your records, and you will receive a check for</p> <p>10 the 20 percent of the Medicare charge not paid by</p> <p>11 Medicare if such charges are covered by SMW Plus.</p> <p>12 Did I read that correctly?</p> <p>13 A. You did.</p> <p>14 Q. To your knowledge, is that the same</p> <p>15 process that's in effect today?</p> <p>16 A. The statement that says you will receive a</p> <p>17 check, you know, is the only thing that concerns me.</p> <p>18 I think we're paying directly to whomever,</p> <p>19 physician, hospital, rather than to the person would</p> <p>20 be my thought on that.</p> <p>21 Again, this is the pension fund's</p> <p>22 document, and probably what they meant is it will be</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Uh-huh.</p> <p>2 Q. And the last sentence of that first</p> <p>3 paragraph says, no coverage under SMW Plus is</p> <p>4 provided for, and then there's a list of items that</p> <p>5 continue on to the next page.</p> <p>6 A. Uh-huh.</p> <p>7 Q. And the last item is take-home</p> <p>8 prescription drugs.</p> <p>9 A. Uh-huh.</p> <p>10 Q. Is the coverage with respect to take-home</p> <p>11 prescription drugs the same as it was -- excuse me.</p> <p>12 In 1993, was it the same that it is</p> <p>13 currently?</p> <p>14 A. To my knowledge, take-home prescription</p> <p>15 drugs are still not covered, so it would align</p> <p>16 itself apparently with this same statement.</p> <p>17 Q. Are there any other prescription drugs</p> <p>18 that are excluded from coverage?</p> <p>19 A. Again, it just falls back to</p> <p>20 Medicare-approved. That's, you know, the starting</p> <p>21 basis for all of the payments.</p> <p>22 Q. If you would, staying on the same page,</p>	<p style="text-align: right;">Page 85</p> <p>1 paid for.</p> <p>2 Q. So currently it's your understanding the</p> <p>3 participants are not required to front the money to</p> <p>4 their provider but rather the Fund would pay the</p> <p>5 provider directly?</p> <p>6 A. That's right.</p> <p>7 Q. Can a participant participate -- strike</p> <p>8 that.</p> <p>9 Can an individual participate in the</p> <p>10 Supplemental Medicare Wraparound Plus Program if</p> <p>11 they have any additional insurance beyond Medicare</p> <p>12 other than the Fund?</p> <p>13 A. You know, there's a qualification for</p> <p>14 individuals to meet to participate. You know, in</p> <p>15 most medical coverages to my knowledge, no one will</p> <p>16 be a part of paying more than 100 percent of</p> <p>17 charges, and when that provider accepts Medicare, he</p> <p>18 gets paid 80 percent. The others, we, pay</p> <p>19 20 percent. That's 100 percent paid.</p> <p>20 So, you know, was your question can he go</p> <p>21 out and buy and pay for other coverage?</p> <p>22 Q. Well, let's say, for example, the provider</p>

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<p style="text-align: right;">Page 86</p> <p>1 charges an amount and Medicare approves an amount 2 that's lower than what the provider charged because 3 for whatever reason the provider charged too much in 4 Medicare's view. 5 A. From what I understand, Medicare has the 6 strong arm in that. They tell those providers what 7 they can charge, you know. 8 I relate this to my parents, you know. I 9 followed through. They have supplemental insurance 10 with Bankers Life, you know. They say how much that 11 provider's original bill is, and then they say how 12 much they are going to cover, and they will pay 13 80 percent of that, and then this supplementary 14 insurance pays that 20 percent. 15 So there's no -- the provider has to say 16 he accepts Medicare before that person gets services 17 from him is my understanding, so there's no -- 18 Q. So it's your understanding that the 19 provider can never receive payment in excess of the 20 total amount that Medicare approves? 21 MS. CONNOLLY: Objection to form. Sorry. 22 THE WITNESS: The 100 percent -- restate</p>	<p style="text-align: right;">Page 88</p> <p>1 knowledge that they do. 2 Q. If you would, please, just quickly turn to 3 Exhibit Randle 003, which is the 2003 Summary Plan 4 Description. 5 A. Uh-huh. 6 Q. And specifically Page SMW 0012. 7 A. All right. 8 Q. And there's a section that says May I 9 Enroll in SMW Plus if I Am Covered Under a 10 Nontraditional Medicare Plan. It says the first 11 paragraph, the benefits provided under the SMW Plus 12 program are offered as a supplement to standard 13 Medicare Part A and Part B benefits. If you are 14 enrolled in a Medicare plus choice plan such as a 15 Medicare HMO, or if you change your coverage to such 16 a plan, you are not eligible for SMW Plus benefits. 17 Did I read that correctly? 18 A. Yeah. 19 Q. Is it your understanding that this policy 20 is actually currently in place? 21 A. Yes. 22 Q. And is it your understanding that that</p>
<p style="text-align: right;">Page 87</p> <p>1 that. 2 BY MR. CHRISTOFFERSON: 3 Q. Am I understanding your testimony 4 correctly to be that the provider is only allowed to 5 charge what Medicare says is an allowable charge? 6 A. That's my understanding. 7 MS. CONNOLLY: Same objection. 8 BY MR. CHRISTOFFERSON: 9 Q. Does the Fund keep track of whether any of 10 its participants have other insurance? And 11 participants in the Medicare wraparound program. 12 A. I think the Fund monitors in case there 13 is, you know, automobile insurance to subrogate 14 against or, you know, any other insurance. Say a 15 fellow is at a home of somebody and has an accident. 16 It can be filed against that guy's homeowner policy. 17 They monitor it from that standpoint, you know. 18 I'm sure they ask that question if they 19 have got it. I think most forms when you fill them 20 out, that question I've seen as a part of it, so 21 from that standpoint, I'm sure their standard form 22 asks that question. But I don't have personal</p>	<p style="text-align: right;">Page 89</p> <p>1 policy has been in place since the Wraparound Plus 2 Program has been in existence or going back as far 3 as you can? 4 A. Yeah. Now, how long has Medicare plus 5 choice plan and Medicare HMO been out there 6 available, I'm not sure. Our plan should have 7 adopted that statement at the time they came out 8 because our administrator stays on top of every new 9 federal regulation and every new thing that comes 10 out. 11 So I'm sure that we have been following 12 that since those would have come into existence. 13 Q. If you would, look at the second 14 paragraph. The second sentence says, if you should 15 join a Medicare plus choice plan, please contact the 16 Fund office so that your coverage under this program 17 can be terminated. If you incur claims and are 18 enrolled under a Medicare plus choice plan, those 19 claims will not be covered under SMW Plus. 20 Did I read that correctly? 21 A. Yes. 22 Q. Is it your understanding that the Fund</p>

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<p>1 monitors whether its participants are enrolled in 2 other insurance plans such as Medicare plus choice 3 plans? 4 MS. CONNOLLY: Objection to form. 5 You can answer. 6 MR. CHRISTOFFERSON: Strike that. Let me 7 rephrase it. 8 BY MR. CHRISTOFFERSON: 9 Q. How does the Fund know whether its 10 participant is a member of a Medicare plus choice 11 plan or other insurance plan? 12 A. Again, any insurer that's not -- makes 13 sure that there's nothing in excess of 100 percent 14 paid, so in that, assuming, you know, that the 15 provider would come back if a double payment has 16 been made would be one method of checking that out. 17 Now, whether they go to the trouble of 18 asking before they send a payment, is this money 19 still owed, you know, I'm sure they have some checks 20 and balances for doing exactly that. I don't know 21 what they would be, but as you work in this stuff 22 day in and day out, I'm sure you find all those</p>	<p>1 sentence says, I have also been advised that some of 2 the Defendants were referred to as Track 1 3 Defendants and include the following manufacturers, 4 Astro-Zeneca, Bristol-Myers Squibb, GlaxoSmithKline 5 and Johnson & Johnson. 6 Did I read that correctly? 7 A. Yes. 8 Q. And then the paragraph goes on to say that 9 portions of pharmaceutical bills were covered in the 10 first instance by the health fund -- excuse me, that 11 the health fund paid for portions of pharmaceutical 12 bills that were covered in the first instance by 13 Medicare Part B, numerous drugs fall into this 14 category. After first learning of the 15 above-referenced action, the board of trustees 16 authorized Fund counsel to survey records of the 17 health fund to determine some of the drugs which 18 have been paid for by the health fund as a portion 19 of pharmaceutical bills that were covered in the 20 first instance by Medicare Part B and had been 21 manufactured by Track 1 Defendants. The following 22 drugs were identified as having been paid in this</p>
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<p>1 methods of having that coverage or having that 2 information to you. 3 Q. Well, just to be a little bit more 4 specific, where it says that or where it appears to 5 be asking the participant to whom this summary is 6 directed to contact the Fund office in the event 7 that it joins a Medicare plus choice plan, is that 8 the way in which the Fund discovers whether any of 9 its participants are enrolled in Medicare plus 10 choice plan? 11 A. I'd say that would be the initial way, 12 and, of course, there's a monthly correspondence on 13 that. I don't think, of course, logically anybody 14 would be paying for two of them, but I'm sure they 15 have some method of making sure of that. 16 Q. Do you know who would know what these 17 various methods are? 18 A. Teresa Jernigan would be the person. 19 Q. You can set that aside for now. 20 If you would please turn back to your 21 affidavit, which is Exhibit Randle 002, and if you 22 would, please look at Paragraph 4. The second</p>	<p>1 category: Cytosan, Etopophos, Kytril, Levaquin, 2 Nevelbine, Paraplatin, Procrit, Remicade, Rubex, 3 Taxol, Vepesid and Zoladex. 4 Did I read that correctly? 5 A. To my knowledge, yes. 6 Q. And is everything that I've just read, in 7 fact, true? 8 A. Yes. 9 Q. How do you know that the health fund paid 10 a portion of pharmaceutical bills that were covered 11 in the first instance by Medicare Part B? 12 A. By review of claims paid. 13 Q. And who conducted that review? 14 A. Of course Southern Benefit Administrators 15 is involved in it, as they have the records. I 16 think there was people involved in that process. I 17 don't know the exact details of how that was done as 18 to who did it, but a sampling should have been done 19 by the Southern Benefit Administrators, 20 Teresa Jernigan, her people. 21 Q. And is this the survey that you referred 22 to in that same paragraph?</p>

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<p style="text-align: right;">Page 94</p> <p>1 A. Refresh my memory.</p> <p>2 Q. It says, after learning of the</p> <p>3 above-referenced action, the board of trustees</p> <p>4 authorized Fund counsel to survey records of the</p> <p>5 health fund.</p> <p>6 A. Uh-huh.</p> <p>7 Q. When was that survey commissioned?</p> <p>8 A. Basically as I signed this document,</p> <p>9 December the 14th of '04, would have been the</p> <p>10 authorization to go forward with that, and Jan --</p> <p>11 Q. And what records were searched?</p> <p>12 A. Well, the claim file, all people situated</p> <p>13 in this coverage, and I think at that point in time</p> <p>14 did we have -- we didn't have a Massachusetts named</p> <p>15 situation. It was just all people that had claims</p> <p>16 for drugs, these drugs.</p> <p>17 Q. And what was actually requested to be done</p> <p>18 in this survey?</p> <p>19 MS. CONNOLLY: I'm just going to instruct</p> <p>20 you not to answer anything that you learned just by</p> <p>21 virtue of talking to either me or Jan. But you can</p> <p>22 answer if you can answer outside of that.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. I think, you know, in that process you're</p> <p>2 going to see others. I'm not aware.</p> <p>3 Q. That last sentence in that Paragraph 4</p> <p>4 says, I am certain other drugs have been paid for in</p> <p>5 similar fashion, and with more time the health fund</p> <p>6 can determine the names of those drugs.</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. How are you certain that other drugs have</p> <p>10 been paid for in a similar fashion?</p> <p>11 A. Just due to the nature of claims being</p> <p>12 paid for people throughout the United States with</p> <p>13 various conditions, you know. I would say a full</p> <p>14 scope of all drugs available out there in the</p> <p>15 marketplace are potentially there, logically there.</p> <p>16 Q. Have you determined that other drugs were,</p> <p>17 in fact, covered in the first instance by Medicare</p> <p>18 Part B and were paid for by the Fund?</p> <p>19 A. I personally have not determined that.</p> <p>20 Q. What steps did you take to learn whether,</p> <p>21 in fact, that happened?</p> <p>22 A. The process has been initiated. I think</p>
<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: Uh-huh. State the question</p> <p>2 again.</p> <p>3 BY MR. CHRISTOFFERSON:</p> <p>4 Q. What was requested with respect to this</p> <p>5 survey? What were the instructions provided to I</p> <p>6 think you said Teresa Jernigan and the others at the</p> <p>7 third-party administrator in connection with this</p> <p>8 survey?</p> <p>9 A. The instructions were to have claims</p> <p>10 available for review.</p> <p>11 Q. A review by whom?</p> <p>12 A. You know, whomever is chosen to be the</p> <p>13 people that do that review, you know, that states</p> <p>14 the drugs that were ones to be looked at.</p> <p>15 So she was to pull the claim file of</p> <p>16 anyone that had those drugs involved in their claim.</p> <p>17 Q. And when you say those drugs, you mean the</p> <p>18 drugs that are listed in Paragraph 4?</p> <p>19 A. To my recollection, that's what they were</p> <p>20 looking for.</p> <p>21 Q. Were there any other drugs they were</p> <p>22 looking for?</p>	<p style="text-align: right;">Page 97</p> <p>1 it's still currently going, you know. I don't -- I</p> <p>2 assume I'll have a report of that at the time it's</p> <p>3 concluded.</p> <p>4 Q. So you're still conducting this survey?</p> <p>5 A. Yes. Yeah, as we're saying, in the filing</p> <p>6 that we had to file by date order, we're in the</p> <p>7 transition of the software, so it's a very laborious</p> <p>8 process.</p> <p>9 Q. And how long do you think your survey is</p> <p>10 going to take to complete?</p> <p>11 A. My guess, since they're simultaneously</p> <p>12 getting this new software, would be another six,</p> <p>13 eight months possibly.</p> <p>14 Q. If you could also just turn to Exhibit</p> <p>15 Randle 006, the billing records.</p> <p>16 A. Uh-huh.</p> <p>17 Q. And I should state for the record so that</p> <p>18 it's clear that Plaintiffs have produced additional</p> <p>19 documents other than those documents that are</p> <p>20 contained in this exhibit, and these are just</p> <p>21 examples of those billing records, and if I should</p> <p>22 state a question that requires reference to</p>

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<p style="text-align: right;">Page 98</p> <p>1 another -- to other records or if it's unclear what 2 I'm asking because these are only examples, please 3 let me know, and I'll try to rephrase the question. 4 A. All right. 5 Q. Excuse me. 6 A. Let me have another break before we get 7 into that. 8 MR. CHRISTOFFERSON: Absolutely. 9 (Whereupon, a short recess was 10 taken.) 11 BY MR. CHRISTOFFERSON: 12 Q. Mr. Randle, if you would, just please turn 13 back to Exhibit Randle 004 and Page 701, SMW 701, and 14 this appears to be an amendment, Section 3.4, summary 15 of schedule of benefits for optional employees 16 described under Section 4.15 who are eligible to 17 enroll for Medicare benefits and any of their 18 eligible dependents who are eligible to enroll for 19 Medicare benefits. 20 A. Uh-huh. 21 Q. And then on the next page under medical 22 benefits, it says, the Fund will pay major medical</p>	<p style="text-align: right;">Page 100</p> <p>1 people. There was some exclusion when you reached 2 eligibility for Medicare coverage. Whether it was 3 truly just the contractor or contractor and optional 4 employees, I just feel that that happened, but here 5 at this time, yes. 6 Q. So at least as of the 2nd of October, 7 2002, the Fund was providing Medicare benefits -- 8 A. Uh-huh. 9 Q. -- to optional employees? Thank you. 10 Just getting back to again your affidavit, 11 you can set that aside, you mentioned that as a 12 result of the survey that is still ongoing of the 13 Fund's records that you hoped to get a report at 14 some point? 15 A. Well, I'm one of those micromanagers, so I 16 generally like to have an idea of what's going on on 17 anything that I'm involved in, so yeah, I'll be 18 asking for an update. 19 Q. With respect to the drugs that are 20 identified in Paragraph 4, did you receive a report 21 that indicated that those drugs were among those 22 that the Fund had provided reimbursement for under</p>
<p style="text-align: right;">Page 99</p> <p>1 expense benefits for charges approved by Medicare 2 but not paid by Medicare. These will generally 3 include, and then it goes on to say among other 4 things Part B deductible and Part B copayments. 5 Did I read that correctly? 6 A. Yes. 7 Q. And then the last page of that amendment 8 appears to be the next page, 703, and is that your 9 signature that appears on that page? 10 A. Yes. 11 Q. And is the date that I'm reading correctly 12 the 2nd day of October, 2002? 13 A. Yes. 14 Q. So as of 2002, was the Fund providing 15 Medicare benefits to optional employees? 16 A. It appears from this that they were. 17 Q. Does that refresh your recollection as to 18 whether the Fund is currently providing such 19 benefits? 20 A. I still maintain that we dropped the 21 optional. Now, you know, it could be just the 22 contractors ourselves rather than the optional</p>	<p style="text-align: right;">Page 101</p> <p>1 the Wraparound Plus Program? 2 A. That was the initial question, you know, 3 did we have people with this usage of these drugs, 4 and the report that I verbally got back was that 5 there were people. 6 Q. And how did you learn that? 7 A. Through conversation. 8 Q. With whom? 9 A. It might have been Jan and I. It might 10 have been Lynn Brassel. I don't recall for sure 11 who, but there was a conversation that there was 12 those drugs paid for for the SMW Plus people. 13 Q. And do you know specifically how those 14 drugs were identified? 15 A. Through the claim forms review. 16 Q. Have you determined that as of today that 17 other drugs covered in the first instance by 18 Medicare Part B were paid for by the Fund? 19 A. I personally have not looked at the 20 records and have that knowledge, but, you know, I 21 guess thinking of the process and the people 22 involved and everything that logically probably</p>

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<p style="text-align: right;">Page 102</p> <p>1 every drug out there, you know, would have some 2 coverage, use by our participants. 3 Q. What steps did you take to learn the 4 current results of your survey? 5 A. Well, there hasn't been any results other 6 than the fact that, you know, certain drugs have 7 been used by participants. 8 Q. Have you identified any drugs manufactured 9 by Schering-Plough or Warrick Pharmaceuticals? 10 A. I have not gotten into that deep of detail 11 in any report. 12 Q. So the Fund has not identified any 13 Schering-Plough or Warrick drugs? 14 A. Well, it's very possible and likely that 15 they have. The report back to me has not identified 16 particular manufacturers or, you know, just the fact 17 that drugs had been used by the participants fell in 18 the class. 19 Q. In preparation for your deposition today, 20 did you ask anyone what the current status of that 21 survey of these records is? 22 A. Yes, I've visited with Teresa to -- not</p>	<p style="text-align: right;">Page 104</p> <p>1 State the question again. 2 Q. Are these examples of the types of records 3 that the Fund and the plan administrator for the 4 Fund maintain with respect to the claims that the 5 Fund has paid? 6 A. Yes, to my knowledge, yes. 7 Q. And again, I would represent that 8 Plaintiffs have produced records comprising the 9 Bates range of SMW 0034 through SMW 580, but all 10 that is marked in this particular exhibit is through 11 SMW 0084. 12 A. Uh-huh, yes. 13 Q. How were these records compiled for 14 production? 15 A. For production? 16 Q. In this litigation. 17 A. Well, they're filed chronologically in 18 their current state, and they will be accumulating 19 them by state. In particular Massachusetts at this 20 point will be their target. 21 Q. Have any records to your knowledge been 22 produced reflecting payment to a provider, medical</p>
<p style="text-align: right;">Page 103</p> <p>1 Teresa. Sharon Faulkner is the lady that heads up 2 this software conversion, and she told me that it 3 was ongoing and that this information would be more 4 easily obtained in that conversion that they're 5 doing. 6 Q. And did Ms. Faulkner or anyone else tell 7 you that the Fund has identified any drugs 8 manufactured by Schering-Plough or Warrick 9 Pharmaceuticals? 10 A. No, we didn't have that discussion in that 11 detail. 12 Q. If you could, please turn to Exhibit Randle 13 006. 14 You testified earlier that the Fund 15 through the plan administrator maintains records of 16 the claims that it pays under the Wraparound Plus 17 Program? 18 A. Yes. 19 Q. Are these examples of those records? 20 A. To the best of my knowledge. I see them 21 identified as retired sheet metal workers, so from 22 that standpoint, yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 services provider based in Massachusetts? 2 A. My understanding is yes, that they have. 3 Q. And just to clarify, it's your 4 understanding that those have not only been located, 5 they have been produced to the Defendants? 6 A. Located I've been told, you know. 7 Produced, I don't know personally. 8 MR. CHRISTOFFERSON: Just for the record, 9 to the extent that there are records that have been 10 located with respect to providers based in 11 Massachusetts, we would request those to be 12 produced. 13 THE WITNESS: That's the intention. 14 MS. CONNOLLY: You'll get them as we get 15 them. 16 THE WITNESS: Uh-huh. 17 BY MR. CHRISTOFFERSON: 18 Q. And these records are kept with the 19 third-party administrator? 20 A. In Goodlettsville. 21 Q. In Goodlettsville. 22 A. I think they have a professional group</p>

27 (Pages 102 to 105)

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<p>1 that storage wise takes care of them warehouse wise</p> <p>2 Q. Mr. Randle, I'm not going to go through</p> <p>3 every one of these records because we would be here</p> <p>4 for weeks, but if you could please just turn to</p> <p>5 Page SMW 0040, Page 40. I see this label is</p> <p>6 actually up a little bit on the page, so it might be</p> <p>7 difficult to find.</p> <p>8 A. All right, uh-huh.</p> <p>9 Q. Do you recognize this document that's on</p> <p>10 this page?</p> <p>11 A. I think this is the same document that</p> <p>12 I've seen in the past that has the form to be used</p> <p>13 and the claim form.</p> <p>14 Q. So you don't obviously recognize this</p> <p>15 particular --</p> <p>16 A. No.</p> <p>17 Q. -- form?</p> <p>18 But you recognize the general form that</p> <p>19 this appears on?</p> <p>20 A. Uh-huh.</p> <p>21 Q. What is this document, the form?</p> <p>22 A. Just a health insurance claim form.</p>	<p>1 Q. And so let's just deal with those</p> <p>2 separately.</p> <p>3 Do you know who created the form itself?</p> <p>4 A. The blank form?</p> <p>5 Q. The blank form.</p> <p>6 A. That would be our third-party</p> <p>7 administrator I would say would be -- well, of</p> <p>8 course, it states down here it's been approved by</p> <p>9 the AMA Council on Medical Services, so it might be</p> <p>10 a stock form that they buy.</p> <p>11 Q. If you would, just try to perhaps help</p> <p>12 refresh your recollection, if you look at the bottom</p> <p>13 of this, the very bottom underneath where actually</p> <p>14 the form stops and you see some writing on the</p> <p>15 right-hand lower corner that says Form HCFA-1500.</p> <p>16 A. Uh-huh.</p> <p>17 Q. And then Form RRB-1500 and then</p> <p>18 Form OWCP-1500.</p> <p>19 A. I see that.</p> <p>20 Q. Does that help at all refresh your</p> <p>21 recollection as to who created this form?</p> <p>22 A. HCFA, you know, not knowing what that</p>
Page 107	Page 109
<p>1 Q. And who creates this document?</p> <p>2 A. I would assume that it's created in</p> <p>3 Goodlettsville by the claims payor, you know. There</p> <p>4 would be an initiation of this form from the</p> <p>5 participant information wise, and I guess that is</p> <p>6 what we stated earlier came from Medicare, so it was</p> <p>7 a matter of those people getting their Medicare</p> <p>8 statement coupling it with probably this claim form</p> <p>9 as a cover sheet for that.</p> <p>10 So, you know, I'm sure the participants</p> <p>11 are not typing this thing out, so I would assume</p> <p>12 that that would have been by it appears the same</p> <p>13 machine produced print wise that put the sheet metal</p> <p>14 Goodlettsville, Tennessee address at the top, so I</p> <p>15 would assume that they produced it there from the</p> <p>16 information sent to them.</p> <p>17 Q. Let me just clarify. Perhaps my question</p> <p>18 wasn't clear. I think my question was unclear.</p> <p>19 On this document, there is a form, and</p> <p>20 then someone or something typed information into</p> <p>21 this form.</p> <p>22 A. Uh-huh.</p>	<p>1 stands for, again, my assumption would be that it's</p> <p>2 a standard form that's out in the industry, health</p> <p>3 claim industry.</p> <p>4 Q. Would it refresh your recollection if I</p> <p>5 represented to you that this is a form that's</p> <p>6 generated by the federal government as opposed to</p> <p>7 your third-party administrator?</p> <p>8 A. Yeah. Well, that's what would stand to</p> <p>9 reason as it has the AMA Council approval, and</p> <p>10 everything that would be done by them would probably</p> <p>11 be a federal agency.</p> <p>12 Q. And turning to the information that has</p> <p>13 been entered onto this form, who or what is</p> <p>14 responsible for entering the information onto this</p> <p>15 form?</p> <p>16 A. Well, as I look at it, it's very possible</p> <p>17 it came from the physician, his office, you know.</p> <p>18 The original information would obviously had to have</p> <p>19 come from them and the coding that's done or the</p> <p>20 procedures that were done, because all of that is</p> <p>21 reviewed in the process by Medicare, so I would</p> <p>22 assume the physician, their people in the office did</p>

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<p style="text-align: right;">Page 110</p> <p>1 it.</p> <p>2 Q. And if you would, could you just please</p> <p>3 look at the column in the bottom section that says</p> <p>4 procedures, services or supplies.</p> <p>5 A. Uh-huh.</p> <p>6 Q. And then there's a column that's headed</p> <p>7 CPT/HCPCS.</p> <p>8 A. Uh-huh.</p> <p>9 Q. And there are some numbers that appear in</p> <p>10 that column.</p> <p>11 Do you see where there's an entry that</p> <p>12 says J9096?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what that refers to?</p> <p>15 A. No.</p> <p>16 Q. Do you know what any of these codes refer</p> <p>17 to?</p> <p>18 A. Not personally I don't, but it stands to</p> <p>19 reason again it's a standard coding in the business,</p> <p>20 so to speak. I'm sure it's aligned with Medicare</p> <p>21 coding.</p> <p>22 Q. With respect to the codes that began with</p>	<p style="text-align: right;">Page 112</p> <p>1 detail to understand for sure. There's a net</p> <p>2 amount, so I assume, you know, it shows the total</p> <p>3 claim and net amount that's paid.</p> <p>4 So it would be some kind of summary of the</p> <p>5 doctor's charges.</p> <p>6 Q. Do you see at the top there are some</p> <p>7 columns listed, and it appears that a section of</p> <p>8 this was redacted, but it appears that these columns</p> <p>9 run down through the page, and it says among other</p> <p>10 things there's a column that says P-R-O-C --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- at the top.</p> <p>13 Do you know what that column means?</p> <p>14 A. I don't.</p> <p>15 Q. Do you know what the column billed means?</p> <p>16 A. It would stand to reason it is the amount</p> <p>17 the physician has billed for these various codes.</p> <p>18 Q. And just as an example, if you follow that</p> <p>19 column down, the second entry there says 75.</p> <p>20 Is that \$75 under that billed amount?</p> <p>21 A. Billed amount, I would assume it is.</p> <p>22 Q. And then the next column over says</p>
<p style="text-align: right;">Page 111</p> <p>1 a J -- well, strike that.</p> <p>2 Is there anything on this form that</p> <p>3 indicates what prescription drug was administered by</p> <p>4 the physician?</p> <p>5 MS. CONNOLLY: Objection, form.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: In that column D, it states</p> <p>8 procedures, services, supplies.</p> <p>9 BY MR. CHRISTOFFERSON:</p> <p>10 Q. If you would turn to Page 42, two pages</p> <p>11 ahead of that.</p> <p>12 Do you recognize this document or this</p> <p>13 type of document?</p> <p>14 A. No, not personally I don't.</p> <p>15 Q. Do you know who creates this document?</p> <p>16 A. No, I don't. Of course, at the top</p> <p>17 right-hand corner it says Medicare Remittance</p> <p>18 Notice, so I assume Medicare.</p> <p>19 Q. Do you know what this document is used</p> <p>20 for?</p> <p>21 A. Well, you have all the codes, the cost,</p> <p>22 claim total, you know. It doesn't give enough</p>	<p style="text-align: right;">Page 113</p> <p>1 allowed.</p> <p>2 A. Right.</p> <p>3 Q. Do you know what that means?</p> <p>4 A. I would say that that's Medicare's allowed</p> <p>5 amount.</p> <p>6 Q. And with respect to that same entry, is</p> <p>7 that \$48.86?</p> <p>8 A. Yes.</p> <p>9 Q. And then there is a column two over that</p> <p>10 says C-O-I-N-S.</p> <p>11 Do you know what that means?</p> <p>12 A. Coinsurance, I would assume.</p> <p>13 Q. And that value in that same entry is</p> <p>14 \$9.77?</p> <p>15 A. Which appears to be about 20 percent of</p> <p>16 the 48.86.</p> <p>17 Q. Is that the amount that the Fund paid</p> <p>18 through the Wraparound Plus Program for that</p> <p>19 particular entry?</p> <p>20 MS. CONNOLLY: Objection to form.</p> <p>21 MR. CHRISTOFFERSON: What's the basis of</p> <p>22 your objection?</p>

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<p style="text-align: right;">Page 114</p> <p>1 MS. CONNOLLY: He said he doesn't know 2 anything about this form, so he's interpreting the 3 document as much as you can. 4 THE WITNESS: Again, in common sense from 5 the accounting background, you know, total charges 6 3,000, Medicare paid 2,000, SMW Plus paid 402 7 something. 8 BY MR. CHRISTOFFERSON: 9 Q. But you don't know anything really about 10 this form? 11 A. No. I don't get into those details, no. 12 That's what we hire the third-party people for. 13 Q. How does the Fund know what drug it's 14 reimbursing when it reimburses for a 15 physician-administered drug under this program? 16 MS. CONNOLLY: Objection to form. 17 You can answer. 18 THE WITNESS: A code number would give 19 them that indication I would assume. 20 BY MR. CHRISTOFFERSON: 21 Q. And how does the Fund know who 22 manufactured any of the drugs that are listed on</p>	<p style="text-align: right;">Page 116</p> <p>1 class period, the SMW health fund had paid for 2 portions of pharmaceutical bills that were covered 3 in the first instance by Medicare Part B. 4 Do you see that? 5 A. Uh-huh. 6 Q. Did I read that correctly? 7 A. I wasn't following it. Start it off. 8 Q. Let me try it again. During the class 9 period, the SMW health fund has paid for portions of 10 pharmaceutical bills that were covered in the first 11 instance by Medicare Part B. 12 Did I read that correctly? 13 A. You read it correctly, but it would seem 14 like it should say SMW Plus to me. 15 Q. Fair enough. And is this paragraph, 16 Paragraph 25a, about the Fund of which you're a 17 trustee, just generally? 18 A. Yes. 19 Q. And then the last sentence says, the drugs 20 for which payments were made include Cytosan, in 21 parenthesis BMS, Etopophos, parenthesis BMS, Kytri, 22 parenthesis GSK, Levaquin, parenthesis J&J,</p>
<p style="text-align: right;">Page 115</p> <p>1 these forms? 2 MS. CONNOLLY: Objection to form. 3 You can answer. 4 THE WITNESS: I don't know. 5 MR. CHRISTOFFERSON: Would you please mark 6 this. 7 (Exhibit Randle 007 marked as 8 requested.) 9 BY MR. CHRISTOFFERSON: 10 Q. Mr. Randle, if you would, could you please 11 turn to Page 13 of what the court reporter has 12 marked as Exhibit Randle 007. 13 A. This is the original numbering sequence? 14 Q. Yes. 15 MS. CONNOLLY: Yes, it's not Bates 16 numbered. 17 BY MR. CHRISTOFFERSON: 18 Q. Page 13, and specifically Paragraph 25a. 19 A. Uh-huh, all right. 20 Q. The last sentence says -- well, strike 21 that. 22 The penultimate sentence says, during the</p>	<p style="text-align: right;">Page 117</p> <p>1 Nevelbine, parenthesis GSK, Paraplatin, parenthesis 2 BMS, Procrit, parenthesis J&J, Remicade, parenthesis 3 J&J, Rubex, parenthesis BMS, Taxol, parenthesis BMS, 4 Vepesid, parenthesis BMS, and Zoladex, parenthesis 5 Astro-Zeneca. 6 Did I read that correctly? 7 A. To the best of my knowledge you did. 8 Q. First, if you would, what is the 9 significance of the information that's included in 10 the parenthesis? 11 MS. CONNOLLY: Objection to form. 12 THE WITNESS: It's a further 13 identification of what they just spoke of would be 14 the logic. 15 BY MR. CHRISTOFFERSON: 16 Q. For example, are you alleging that with 17 respect to the drug Cytosan that the Fund made 18 payments for Cytosan and that the payments for which 19 they made were the drug that was manufactured by 20 Bristol-Myers Squibb? 21 MS. CONNOLLY: Objection to form. 22 You can answer.</p>

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<p style="text-align: right;">Page 118</p> <p>1 THE WITNESS: Logically I guess that's</p> <p>2 what they're saying.</p> <p>3 BY MR. CHRISTOFFERSON:</p> <p>4 Q. What's the basis for the claim that the</p> <p>5 drugs for which the SMW Plus health -- SMW</p> <p>6 Wraparound Plus Program made payments for these</p> <p>7 particular drugs manufactured by these particular</p> <p>8 defendants?</p> <p>9 MS. CONNOLLY: Objection to form.</p> <p>10 THE WITNESS: Restate that.</p> <p>11 BY MR. CHRISTOFFERSON:</p> <p>12 Q. How do you know that you made payments for</p> <p>13 these particular drugs?</p> <p>14 A. Again, our process is a third-party</p> <p>15 administrator. This coding that we saw in the other</p> <p>16 would lead you to know, I think, if it were a drug,</p> <p>17 and I assume, maybe there's a separate code not only</p> <p>18 for the type of medication but for the manufacturer,</p> <p>19 and it could be that there's only one manufacturer</p> <p>20 of a particular drug being the lead for that.</p> <p>21 Q. What steps did you take in preparation for</p> <p>22 your deposition today to learn the basis for the</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. But you don't know?</p> <p>2 A. No, I don't.</p> <p>3 Q. With respect to drugs that are</p> <p>4 manufactured by several different manufacturers, how</p> <p>5 do you know that one particular version of that drug</p> <p>6 was used versus another?</p> <p>7 A. Personally, I don't. I wouldn't know how</p> <p>8 to gain that information.</p> <p>9 Q. And does the Fund know?</p> <p>10 A. Sure, I'm sure they do, you know. They're</p> <p>11 into this business, and I would expect them to know</p> <p>12 every minute detail of the process.</p> <p>13 Q. But you don't know on what basis they</p> <p>14 know?</p> <p>15 A. Education would be my comment.</p> <p>16 Q. If you would, Mr. Randle, could you please</p> <p>17 turn to Page 82, SMW 0082 of Exhibit Randle 006.</p> <p>18 A. 86?</p> <p>19 Q. I'm sorry, 82.</p> <p>20 A. 82.</p> <p>21 All right.</p> <p>22 Q. Just take a minute to look over that.</p>
<p style="text-align: right;">Page 119</p> <p>1 claims that are made in this with respect to these</p> <p>2 particular drugs?</p> <p>3 MS. CONNOLLY: Don't talk to him about any</p> <p>4 conversations you had with me or Jan.</p> <p>5 THE WITNESS: Your question being what</p> <p>6 preparations did I make to understand particular</p> <p>7 drugs that were covered?</p> <p>8 BY MR. CHRISTOFFERSON:</p> <p>9 Q. Yes, as a 30(b)(6) witness, yes.</p> <p>10 A. I would say I did not make any preparation</p> <p>11 to pinpoint a drug, product, company, anything like</p> <p>12 that, you know. That's not a detail that I would</p> <p>13 logically deal with. It's just again a</p> <p>14 Medicare-approved process.</p> <p>15 Q. And I think you mentioned that you said</p> <p>16 maybe there's a separate code not only for the type</p> <p>17 of medication but for the manufacturer, and it could</p> <p>18 be that there's only one manufacturer of a</p> <p>19 particular drug being the lead for that.</p> <p>20 What's the basis for that statement?</p> <p>21 A. That's one of those swags, I guess. It's</p> <p>22 just a wild guess from my viewpoint.</p>	<p style="text-align: right;">Page 121</p> <p>1 Do you recognize this document?</p> <p>2 A. Well, I'd say it's a check produced by the</p> <p>3 Goodlettsville third-party administrator Southern</p> <p>4 Benefits for Sheet Metal Workers National Health</p> <p>5 Fund to this physician, mailed directly to them for</p> <p>6 411.57.</p> <p>7 Q. And so this is, if I understand you</p> <p>8 correctly, this is a record of payment that the</p> <p>9 sheet metal workers fund made with respect to a</p> <p>10 particular claim?</p> <p>11 A. That would be my understanding.</p> <p>12 Q. Is this a record that is kept in the usual</p> <p>13 course of the Fund's business?</p> <p>14 A. Yes, they keep copies of all checks,</p> <p>15 disbursement checks.</p> <p>16 Q. Did you, when you commissioned either</p> <p>17 counsel or whoever it was that was going to be</p> <p>18 searching for and producing these documents for you</p> <p>19 did you request that these documents, the documents</p> <p>20 indicating payment such as this document, be</p> <p>21 produced?</p> <p>22 A. I didn't get specific on what to produce,</p>

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<p style="text-align: right;">Page 122</p> <p>1 so no, I didn't tell them to produce the payment. 2 Q. Why is it that there are not records of 3 payment with each claim insurance form and Medicare 4 Remittance Notice that was produced? 5 MS. CONNOLLY: Objection to form. 6 THE WITNESS: Restate. 7 BY MR. CHRISTOFFERSON: 8 Q. Well, I'll represent to you that there are 9 actually very few of the documents indicated or 10 represented by what appears on Page 82, and I'm 11 asking why -- I'm asking whether more of these 12 exist. 13 A. You know, on this Page 81, it refers to a 14 check EFT number, so it could be an electronic funds 15 transfer that was done as opposed to a check in some 16 cases, so it's an either/or would be my guess. 17 Q. I'm sorry to interrupt you. If we could 18 just turn back to Page 40, and I'll represent the 19 way these were originally produced there were blue 20 sheets that separated documents, although I didn't 21 reproduce them here with blue. They're separated 22 with white sheets.</p>	<p style="text-align: right;">Page 124</p> <p>1 provider that's indicated by the check/EFT reference 2 at the top of this page? 3 A. Well, you have the last column says 4 provider paid would be what I assume that 5 abbreviation to be, so dropping down to the last 6 figure, the net, 1624.20 would be my guess. 7 Q. That's the amount that the Fund paid or 8 that Medicare and the Fund paid together? 9 MS. CONNOLLY: Objection to form. 10 THE WITNESS: Restate. 11 BY MR. CHRISTOFFERSON: 12 Q. Is it your testimony that 1624.20 is the 13 amount that the Fund paid to this particular 14 provider for the services that were rendered and 15 indicated on the preceding health insurance claims 16 forms? 17 MS. CONNOLLY: Objection to form. 18 THE WITNESS: You know, I wouldn't have 19 knowledge of that for sure. I couldn't state for 20 sure that that's correct. 21 BY MR. CHRISTOFFERSON: 22 Q. Is it possible that this check/EFT number</p>
<p style="text-align: right;">Page 123</p> <p>1 But Page 40, 41 and 42 appeared I'll 2 represent to you as a unit between two blue sheets. 3 A. All right. 4 Q. And is there a record of payment by the 5 Fund that appears in connection with this particular 6 set of claims? 7 A. Up in the top left-hand corner, it looks 8 like electronic transfer or check number, and that 9 number appears to be somewhat in the sequence of 10 what that other one was as I recall the number, 87 11 something. 12 Q. So is it your testimony that that 13 indicates payment by the Fund where it says 14 check/EFT number? 15 A. Yes, and as opposed to having duplication 16 of copies of checks, I would say all those could be 17 produced from that number. They would be filed in 18 the bank statement. 19 Q. And is it your testimony that the amount 20 in this particular case that was produced -- excuse 21 me, that was made to the provider -- strike that. 22 What was the amount that was paid to the</p>	<p style="text-align: right;">Page 125</p> <p>1 is a reference to the amount that Medicare paid to 2 the provider and not the Fund? 3 MS. CONNOLLY: Objection to form. 4 THE WITNESS: Restate it. 5 6 BY MR. CHRISTOFFERSON: 7 Q. Is it your testimony that you're certain 8 that the amount that this check/EFT reference at the 9 top of this Page 42 is in reference to an amount 10 that the Fund paid to the provider as opposed to 11 what Medicare paid in terms of its 80 percent that 12 it owed to the provider? 13 MS. CONNOLLY: Objection to form. 14 THE WITNESS: Yeah, certainly, you know, 15 couldn't state anything pertaining to that with 16 certainty, you know. I'm looking at this for the 17 first time. I've never been in this part of the 18 process. 19 So I couldn't tell you for sure. That 20 would be something Teresa Jernigan -- 21 BY MR. CHRISTOFFERSON: 22 Q. Just to be clear, you don't know, in fact,</p>

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<p style="text-align: right;">Page 126</p> <p>1 what this check/EFT is in reference to?</p> <p>2 A. Common sense would tell me it is a check</p> <p>3 number or electronic funds transfer reference</p> <p>4 number. That's -- I'm taking a guess at that, but</p> <p>5 that would be the common sense.</p> <p>6 MR. CHRISTOFFERSON: Just for the record,</p> <p>7 Defendants would request that to the extent</p> <p>8 documents such as those that appear on SMW 0082,</p> <p>9 that other documents such as this are in existence,</p> <p>10 that they be produced to the Defendants to indicate</p> <p>11 payment by the Fund in connection with these claims.</p> <p>12 THE WITNESS: 82 or -- okay.</p> <p>13 MS. CONNOLLY: I'll consider your request.</p> <p>14 I think we gave you everything, but we will look</p> <p>15 into that.</p> <p>16 BY MR. CHRISTOFFERSON:</p> <p>17 Q. With respect to the drugs that are listed</p> <p>18 in Paragraph 4 of your affidavit that we discussed</p> <p>19 earlier, were payments made by the Fund for these</p> <p>20 drugs based on average wholesale price or AWP?</p> <p>21 MS. CONNOLLY: Objection, form.</p> <p>22 THE WITNESS: Do you want to restate?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. What is your understanding of average</p> <p>2 wholesale price?</p> <p>3 A. You know, it is what its name is as I</p> <p>4 understand it. It's some type of a standard that's</p> <p>5 produced by some group and identified as just that</p> <p>6 average wholesale price. Now, how their sampling is</p> <p>7 done and who is it that does it and whatever I don't</p> <p>8 have any knowledge of.</p> <p>9 Q. Do you know who calculates average</p> <p>10 wholesale price?</p> <p>11 A. No.</p> <p>12 Q. Do you know generally how it's used?</p> <p>13 MS. CONNOLLY: Objection to form.</p> <p>14 THE WITNESS: Do you want to restate?</p> <p>15 BY MR. CHRISTOFFERSON:</p> <p>16 Q. Do you know what the purpose of average</p> <p>17 wholesale price is?</p> <p>18 MS. CONNOLLY: Objection to form.</p> <p>19 THE WITNESS: Personally I don't.</p> <p>20 BY MR. CHRISTOFFERSON:</p> <p>21 Q. Does the Fund keep track of the average</p> <p>22 wholesale prices of the drugs that it reimburses?</p>
<p style="text-align: right;">Page 127</p> <p>1 BY MR. CHRISTOFFERSON:</p> <p>2 Q. Were the amounts that the Fund paid to</p> <p>3 providers under the Wraparound Plus Program for the</p> <p>4 drugs that you've identified in Paragraph 4, were</p> <p>5 those amounts based on average wholesale price of</p> <p>6 the drugs that are listed in Paragraph 4?</p> <p>7 MS. CONNOLLY: Objection to form.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: All payments were made based</p> <p>10 on the Medicare-approved plan form. No other</p> <p>11 criteria was looked at by our third-party</p> <p>12 administrator to my knowledge other than, you know,</p> <p>13 you have to go to Medicare to find out that as I</p> <p>14 would see.</p> <p>15 BY MR. CHRISTOFFERSON:</p> <p>16 Q. Do you know if the average wholesale price</p> <p>17 of any of the drugs that were reimbursed appears on</p> <p>18 any of the documents that were produced by the Fund?</p> <p>19 MS. CONNOLLY: Objection, form.</p> <p>20 THE WITNESS: Only if it's a standard</p> <p>21 process of Medicare. I don't know personally.</p> <p>22 BY MR. CHRISTOFFERSON:</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Personally, I don't know if they do.</p> <p>2 Q. Are you familiar with the term wholesale</p> <p>3 acquisition cost or WAC, W-A-C?</p> <p>4 A. No.</p> <p>5 Q. To your knowledge, does the Fund keep</p> <p>6 track of wholesale acquisition costs or WACs for the</p> <p>7 prescription drugs that it reimburses?</p> <p>8 A. Not to my knowledge. I don't know.</p> <p>9 Q. When did you first learn of this</p> <p>10 litigation?</p> <p>11 A. In the end of 2004 I think, at one of our</p> <p>12 trustee meetings, Jan made us aware of it being out</p> <p>13 there and asked us whether we wanted to --</p> <p>14 MS. CONNOLLY: Don't tell him what Jan</p> <p>15 told you.</p> <p>16 BY MR. CHRISTOFFERSON:</p> <p>17 Q. I believe in your affidavit you said</p> <p>18 December 9th, 2004.</p> <p>19 Does that refresh your recollection?</p> <p>20 A. It's very possible if that's what I said.</p> <p>21 Q. And just to be clear, I think you</p> <p>22 testified earlier that you're in the process of</p>

33 (Pages 126 to 129)

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<p style="text-align: right;">Page 130</p> <p>1 identifying healthcare providers based in 2 Massachusetts to whom the Fund made payments under 3 the Medicare Wraparound Plus Program, is that 4 accurate? 5 A. I don't know that we're looking at 6 providers. We're looking at claims paid for 7 participants that live in Massachusetts as opposed 8 to looking at providers. 9 Q. Just quickly, with respect to Exhibit 10 Randle 004, Exhibit Randle 004, the plan document, 11 does this plan document cover all of the benefits that 12 the Fund provides currently including the wraparound 13 Medicare plus program? 14 A. As I stated earlier, there's possibly some 15 other amendments that are not on here. I don't know 16 for sure. That would be my -- it is as far as you 17 have it here effective January the 1st of 2002, so 18 if there were any other amendments, you know, they 19 could be a part of it. 20 Now, this amendment here is dated 2005, 21 November, so it would appear that we're pretty well 22 up to date.</p>	<p style="text-align: right;">Page 132</p> <p>1 representative for the -- well, strike that. 2 If you would go to Exhibit Randle 007, which 3 is the complaint, and if you'd look at the fourth 4 sentence I guess, it says -- 5 MS. CONNOLLY: I'm sorry, what page? 6 BY MR. CHRISTOFFERSON: 7 Q. My apologies. We're back on Page 13, 8 sorry, Paragraph 25a. My apologies. It's the 9 fourth sentence of that paragraph. It says, the SMW 10 Health Fund provides a Supplemental Medicare 11 Wraparound Plus Program that covers the Medicare 12 Part B copayments of its beneficiaries. 13 Did I read that correctly? 14 A. Yes. 15 Q. And if you'd turn back to Page 10, do you 16 see that this paragraph comes under a section 17 Number 2, Proposed Class 2 Representative, MediGap 18 Payors? 19 A. Yes. 20 Q. Is the health fund a proposed class 21 representative? 22 MS. CONNOLLY: Objection, form.</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. CHRISTOFFERSON: Just for the record, 2 because Sheet Metal Workers National Health Fund is 3 only a proposed Class 2 representative and therefore 4 only being proposed with respect to claims 5 copayments, Medicare beneficiary copayments, 6 Defendants will not be asking questions related to 7 the other benefits that the Fund provides pursuant 8 to this plan or other plans, but to the extent that 9 at some point in the future this Fund becomes a 10 proposed representative for another class, we 11 reserve the right to ask those questions about that, 12 about those issues then. 13 MS. CONNOLLY: Okay. We will deal with 14 that then. 15 BY MR. CHRISTOFFERSON: 16 Q. What do you understand the Fund's role to 17 be in this lawsuit? 18 MS. CONNOLLY: Objection to form. 19 You can answer. 20 THE WITNESS: Restate. 21 BY MR. CHRISTOFFERSON: 22 Q. Is the Fund being proposed as a class</p>	<p style="text-align: right;">Page 133</p> <p>1 You can answer. 2 THE WITNESS: To my knowledge, it is a 3 proposed group. 4 5 BY MR. CHRISTOFFERSON: 6 Q. And as a class representative, what are 7 your responsibilities in a lawsuit of this nature? 8 MS. CONNOLLY: Objection to form. 9 You can answer. 10 THE WITNESS: Never being a part of one of 11 these, I guess I would have to be educated on my 12 responsibilities in that role. I don't know off the 13 top of my head for sure. 14 BY MR. CHRISTOFFERSON: 15 Q. And do you know what the class is that you 16 represent or you're purported to represent? 17 MS. CONNOLLY: Objection to form. 18 You can answer. 19 THE WITNESS: It would be multiemployer, 20 you know, MediGap payor groups I would assume, you 21 know. I don't know the details. This is the first 22 time I've seen this document.</p>

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<p style="text-align: right;">Page 134</p> <p>1 BY MR. CHRISTOFFERSON: 2 Q. Did you have the -- with respect to 3 Paragraph 25a on Page 13, when did you first see 4 this paragraph in this document? 5 A. Today. 6 Q. So you never had the opportunity to review 7 this before it was filed? 8 A. There's a document that I've looked at. 9 It's certainly not this thick, some information that 10 I've looked at. I don't know if this is a 11 duplication of that myself. Total recollection of 12 what that document said, I don't think so. As I 13 said, we had that SMW Plus error there in the mid 14 paragraph. That doesn't ring a bell with me. 15 Q. Do you know when you reviewed this other 16 document that you're talking about? 17 A. In the last two or three weeks. 18 Q. Do you know if it was after October 17th? 19 A. That I reviewed it, probably. 20 Q. Did you make changes, any changes to that 21 document? 22 A. No.</p>	<p style="text-align: right;">Page 136</p> <p>1 documents that the Fund was supposed to produce to 2 Defendants pursuant to the court's order of 3 August 16th, 2005? 4 MS. CONNOLLY: Don't tell him anything you 5 learned from Jan or me. 6 THE WITNESS: Say the question again. 7 BY MR. CHRISTOFFERSON: 8 Q. What's your understanding of the documents 9 that the Fund was required to produce pursuant to 10 the court's order in August? 11 MS. CONNOLLY: Same thing. If you know it 12 independent of talking to me or Jan, you can 13 testify. 14 THE WITNESS: To my knowledge, just claim 15 forms, paid claims. 16 BY MR. CHRISTOFFERSON: 17 Q. We have already discussed, or you've 18 already testified I should say, that you requested 19 these documents from the third-party administrator. 20 A. For them to produce. 21 Q. For them to produce. 22 Did you request any documents from</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. What are the claims that the Fund is 2 asserting against the Defendant drug manufacturers? 3 MS. CONNOLLY: Objection to form. 4 You can answer. 5 THE WITNESS: Restate it. 6 BY MR. CHRISTOFFERSON: 7 Q. What claims are you asserting, and by you 8 I mean the Fund, asserting against the Defendants in 9 this litigation? 10 MS. CONNOLLY: Objection to form. 11 You can answer. 12 THE WITNESS: For any overcharge relating 13 to physician-administered drugs for any of our 14 participants. 15 BY MR. CHRISTOFFERSON: 16 Q. And overcharged by whom? 17 A. By the provider, whomever it would be. I 18 understand that some of these drugs are -- well, the 19 physicians for the most part administers, are 20 administering the drugs, so I guess they would be 21 the provider. 22 Q. What is your understanding of the</p>	<p style="text-align: right;">Page 137</p> <p>1 Medicare? 2 A. No. 3 Q. Did you request any documents from any of 4 your participants? 5 A. No. 6 Q. And I think you testified earlier that 7 you're still looking for documents in conducting 8 your search? 9 A. Yes. They're filed chronologically, so 10 we're in this software update and doing that and 11 looking for these at the same time. 12 Q. Other than our conversations here today, 13 has the Fund ever had any written or oral 14 communications with any of the Defendants or 15 representatives of the Defendants? 16 A. Not to my knowledge. 17 Q. How was the Fund harmed by the Defendants? 18 MS. CONNOLLY: Objection to form. 19 THE WITNESS: Do you want to restate? 20 BY MR. CHRISTOFFERSON: 21 Q. In this lawsuit, you're suing the 22 Defendants.</p>

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<p style="text-align: right;">Page 138</p> <p>1 How is it that the Fund was harmed by 2 those Defendants such that you're suing for 3 recovery? 4 MS. CONNOLLY: Objection to form. 5 You can answer. 6 THE WITNESS: In my viewpoint, the 7 participants were harmed, you know. These are 8 fixed-income people that their cost to this Fund is 9 dependent upon our expense, which our expense comes 10 from those providers providing the services and 11 drugs and whatever. 12 So they were harmed in the fact of any 13 overpayment for services or drugs going into the 14 formula that we as trustees set as their rate, no 15 different than we looked at the \$56 in whatever year 16 that was, now being 112, double. 17 BY MR. CHRISTOFFERSON: 18 Q. Does the Fund contend that it suffered 19 harm from Defendants who manufactured drugs for 20 which the Fund did not make any reimbursement 21 payment? 22 MS. CONNOLLY: Objection to form.</p>	<p style="text-align: right;">Page 140</p> <p>1 overcharge. 2 BY MR. CHRISTOFFERSON: 3 Q. Who are the attorneys that represent you 4 in this action? 5 A. Well, you know, Jan Jennings is involved 6 with this process, Jennifer and their firm here. 7 The names -- 8 Q. Wexler? 9 A. The Wexler. 10 Q. The Wexler Firm? 11 A. The Wexler Firm. 12 Q. Do you have an engagement letter with The 13 Wexler Firm? 14 A. No. 15 Q. Are you paying any amount in connection 16 with this case to your attorneys? 17 A. No. 18 MR. CHRISTOFFERSON: Could we take a quick 19 break? 20 MS. CONNOLLY: Yes. 21 (Whereupon, a short recess was 22 taken.)</p>
<p style="text-align: right;">Page 139</p> <p>1 THE WITNESS: Restate that. 2 BY MR. CHRISTOFFERSON: 3 Q. If there are -- strike that. 4 Is it the Fund's contention that it 5 suffered harm caused by the Defendants including 6 Defendants who manufacture drugs for which the Fund 7 did not actually make any payment to a provider? 8 MS. CONNOLLY: Objection to form. 9 THE WITNESS: To my knowledge, no. 10 BY MR. CHRISTOFFERSON: 11 Q. And what is the Fund seeking from this 12 lawsuit? 13 MS. CONNOLLY: Objection to form. 14 You can answer. 15 THE WITNESS: Well, a settlement in the 16 overcharge for these drugs that come back and help 17 reduce the cost of the participants' cost of 18 coverage is what we're wanting, and, you know, I 19 qualify this by participants. It's not -- the Fund 20 is that invisible thing. It's the individual 21 participants that were harmed and should receive 22 reduced costs because of any monies received from</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. CHRISTOFFERSON: I'm going to pass the 2 witness in just a moment to Mr. Sweeney, but I just 3 wanted to make a statement for the record. 4 Upon the completion of Mr. Sweeney's 5 questions, the Track 1 Defendants will be adjourning 6 this deposition and bringing to Judge Saris' 7 attention the lack of documentation provided to 8 substantiate the qualifications of Sheet Metal 9 Workers Health and Welfare Fund as an adequate class 10 representative, which was required by the court's 11 August 16th, 2005 order. We will resume the 12 deposition after receiving more documents if 13 Judge Saris permits the Fund to become a class 14 representative. 15 In addition, the Track 1 Defendants also 16 reserve the right to resume this deposition on the 17 topics to which Mr. Randle was not designated to 18 testify if and when the Fund is ruled to be an 19 adequate class representative by the court. 20 MS. CONNOLLY: Just as I'm sure you know, 21 we disagree about your characterization about the 22 document production, and we will also oppose any</p>

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<p style="text-align: right;">Page 142</p> <p>1 subsequent deposition of the Fund. 2 But we will deal with that when it comes. 3 EXAMINATION 4 BY MR. SWEENEY: 5 Q. Sir, I have a few questions. We met 6 before. My name is Tom Sweeney from the firm of 7 Hogan & Hartson, and I represent BMS, Apothecan and 8 OTN. I will not delay you too long. 9 I think in your testimony you referred to 10 the Fund as self-funded? 11 A. Yes. 12 Q. What does that mean, sir? 13 A. We accumulate income based on past history 14 of expenses, and we're not a profit-making 15 organization basically. We're trying to provide 16 healthcare coverage for the participants at a cost. 17 Q. Do the employers make contributions to the 18 Fund? 19 A. Yes. Their union agreement tells them the 20 rate. 21 Q. Okay. Does the -- do the union members 22 make contributions to the Fund?</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Teresa Jernigan. 2 Q. Okay. Anybody else? 3 A. Well, you know, anyone at Southern Benefit 4 Administrator, but she's the head of this Fund. 5 Q. If you had a question about these forms, 6 that's who you would turn to? 7 A. Teresa. 8 Q. Teresa? 9 A. Yes. 10 Q. Okay. Take a look at Exhibit Randle 003, 11 which is the 2003 Summary Plan Description. 12 A. Yes. 13 Q. I just have one question, which is look at 14 the top of the page in the fax line. 15 A. Uh-huh. 16 Q. There's a reference to 17 Branstetter Kilgore. 18 A. Yes. 19 Q. Who is Branstetter Kilgore? 20 A. That's Jan's firm. 21 Q. Mr. Jennings' firm? 22 A. Uh-huh.</p>
<p style="text-align: right;">Page 143</p> <p>1 A. If they're out of work at a particular 2 time, there is some self-funding that can be done. 3 Q. So part of their union dues go to the 4 Fund? 5 A. No, they have to physically pay if -- if 6 their hour bank runs out, their accumulated hour 7 bank, if their hour bank runs out, they have to pay 8 monthly out of their funds. 9 Q. What do you mean? Was it our bank? 10 A. Hour, h-o-u-r. They accumulate so many 11 hours. I forget exactly what level it goes to. 12 Q. And in addition to that at least for the 13 wraparound fund, there's an additional monthly 14 payment that each of the participants has to make? 15 A. Yes. And I was speaking to you on actives 16 there. On this SMW Plus, it's just that flat fee. 17 Q. Would you take a look at Exhibit Randle 006, 18 which is the claim forms. 19 Is it fair to say, sir, that you're not 20 the right person to talk to about these forms? 21 A. Absolutely. 22 Q. Who is?</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. That's a law firm? 2 A. Yes. 3 Q. Now, just to clarify something that you 4 discussed with Mr. Christofferson earlier, is it 5 correct that before Southern Benefit was hired as 6 the TPA for the Fund that the Fund was administered 7 by the Sheet Metal Workers Pension Fund? 8 A. Employees common to the pension fund and 9 the health and welfare, they shared a group of 10 employees that was the administrator for both. 11 Q. Okay. And that goes back to the beginning 12 of the wraparound plan as you understand it? 13 A. Yes. 14 Q. Okay. Now, Mr. Christofferson asked you 15 some questions about the optional employees plan -- 16 A. Yes. 17 Q. -- and whether you covered Medicare 18 copayments and deductibles, I believe, and it was 19 your testimony as I understood it that at some point 20 that that coverage for optional employees was 21 eliminated; is that correct? 22 A. As they qualified for Medicare.</p>

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<p style="text-align: right;">Page 146</p> <p>1 Q. Right. Why was that coverage eliminated 2 by the Fund? 3 A. I think the costs. 4 Q. You were involved in that decision? 5 A. Yes, uh-huh. 6 MR. SWEENEY: That's all the questions I 7 have. 8 MS. CONNOLLY: I just have two follow-up 9 questions. 10 EXAMINATION 11 BY MS. CONNOLLY: 12 Q. Mr. Randle, you previously testified in 13 response to Mr. Christofferson's question that the 14 Fund believed that it was suing the providers. 15 What did you mean by that? 16 A. Well, of course, this suit is against the 17 pharmaceutical companies in actual fact. The 18 providers, I guess in my mind, provide that in the 19 chain of their billings and everything. 20 So, you know, the pharmaceutical companies 21 and the overcharge for drugs was who we're the 22 bottom line suing, I'd say.</p>	<p style="text-align: right;">Page 148</p> <p>1 2 3 4 5 6 _____ 7 GLENN RANDLE 8 9 Subscribed and sworn to and before me 10 this _____ day of _____, 20____ 11 12 _____ 13 Notary Public 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. You understand that as a class 2 representative that you are required to be here and 3 give your deposition today, right? 4 A. Yes. 5 Q. You also understand that you're required 6 to cooperate with your lawyers in producing 7 documents to the Defendants, right? 8 A. Yes. 9 Q. And you understand that if this case 10 should go to trial that you might be required to 11 testify at trial, correct? 12 A. Yes. 13 MS. CONNOLLY: I have nothing further. 14 MR. CHRISTOFFERSON: I have nothing 15 further. 16 MR. SWEENEY: No further questions. 17 THE WITNESS: Okay. 18 (Whereupon, an off-the-record 19 discussion was held.) 20 MS. CONNOLLY: We reserve signature. 21 (Whereupon, the deposition was 22 concluded.)</p>	<p style="text-align: right;">Page 149</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF C O O K) 4 The within and foregoing deposition of the 5 witness, GLENN RANDLE, was taken before GREG S. 6 WEILAND, CSR, RMR, CRR, Notary Public, at Suite 2000, 7 One North LaSalle Street, in the City of Chicago, Cook 8 County, Illinois, commencing at 8:11 o'clock a.m., on 9 the 17th day of November, 2005. 10 The said witness was first duly sworn and 11 was then examined upon oral interrogatories; the 12 questions and answers were taken down in shorthand 13 by the undersigned, acting as stenographer and Notary 14 Public; and the within and foregoing is a true, 15 accurate and complete record of all the questions 16 asked of and answers made by the aforementioned 17 witness at the time and place hereinabove referred to. 18 The signature of the witness was not waived 19 and the deposition was submitted to the deponent as 20 per copy of the attached letter. 21 The undersigned is not interested in the 22 within case, nor of kin or counsel to any of the</p>

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1 parties.

2 Witness my official signature and seal as
3 Notary Public in and for Cook County, Illinois, on
4 this 1st day of December, 2005.

5

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7 GREG S. WEILAND, CSR, RMR, CRR

8 License No. 084-003472

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